

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:TL-N-675-01

JMMarr

date: FEB 8 2001

to: Ethelyn McDaniel, Team Leader, LMSB, HMCT 1755
Patricia Lozano, Team Coordinator, Long Beach POD, LMSB, HMCT 1755

from: Joyce M. Marr, Attorney
June Y. Bass, Associate Area Counsel (LMSB)

subject: [REDACTED]
Tax Years [REDACTED] - [REDACTED]
TIN: [REDACTED]
Request for Advisory Opinion on Draft Documents Designating
[REDACTED] as Agent Pursuant to
Treas. Reg. § 1.1502-77(d)

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This responds to your January 30, 2001, telefax. You forwarded for our review and comments drafts of: (1) a statement from [REDACTED] ([REDACTED]) authorizing [REDACTED] ([REDACTED]) to act as the designated agent for the former [REDACTED] ([REDACTED]) consolidated return group; and (2) an agreement by [REDACTED] ([REDACTED]) to act as the new designated agent for the former [REDACTED] ([REDACTED]) consolidated

group. Affixed hereto as Exhibit A are copies of the aforesaid draft documents which were given to you by [REDACTED]'s former controller for review and comment.

FACTS¹

The Service is currently examining the consolidated returns of [REDACTED], an affiliated group, for its [REDACTED] to [REDACTED] taxable years. In addition, you have secured a statute extension for the taxpayer's [REDACTED] year and anticipate securing another statute extension for the taxpayer's [REDACTED] year.

During the years [REDACTED] through [REDACTED], inclusive, [REDACTED] was a wholly-owned subsidiary of [REDACTED] ([REDACTED]). The consolidated group ceased to exist in [REDACTED] when the common parent, [REDACTED], transferred its assets to its foreign parent, [REDACTED], and dissolved.

The remaining members of the [REDACTED] consolidated group during the years [REDACTED] through [REDACTED] designated [REDACTED] ([REDACTED]), EIN: [REDACTED], another member of the consolidated group during the years [REDACTED] through [REDACTED], as designated agent under Treas. Reg. § 1.1502-77(d). Such designation was approved by the former District Director of the Southern California District.

[REDACTED] has [REDACTED] completely liquidated, but has not been dissolved. It has been represented that [REDACTED] will be dissolved on or before [REDACTED].

The remaining members of the former [REDACTED] consolidated group have decided that they would like to designate [REDACTED] to act as the designated agent for the former [REDACTED] consolidated group. They have forwarded to you for your review and comment draft statements: (1) for [REDACTED] to designate [REDACTED] as the new agent for the former [REDACTED] consolidated return group; and (2) for [REDACTED] to agree to act as the new designated agent. As indicated above, these draft statements are affixed hereto as Exhibit A. The taxpayer intends to prepare statements similar to the first statement for the other remaining members of the former [REDACTED]

¹Unless specifically noted, we have relied upon facts presented to us orally and in writing by the Examination Division. Our advice might be different if the facts were different. If the facts which we recite in this memorandum ultimately prove to be inconsistent with your understanding of the facts, please contact this office immediately and do not rely on this memorandum.

consolidated group to designate ██████ as agent.

DISCUSSION

I.R.C. § 1502 provides that the consolidated return regulations promulgated by the Service shall govern the determination, computation, and assessment of tax of an affiliated group of corporations making a consolidated return and its constituent corporations.

Generally, the common parent of an affiliated group filing a consolidated return is the agent for the group for just about all tax procedural matters, including signing a statutory extension for the tax year involved. Treas. Reg. § 1.1502-77(a). When, as here, the common parent no longer exists, Treas. Reg. § 1.1502-77(d) provides that the remaining members of the group² may designate as a successor agent one of the remaining members (subject to the district director's approval), or the district director may deal directly with any member of the group concerning its tax liability.

It is sometimes difficult for the Service to identify the common parent of an affiliated group when there are mergers and other acquisitions. Therefore, the Service has provided rules for recognizing alternative agents. The rules are in Temp. Treas. Reg. § 1.1502-77T. The regulation applies if the common parent ceases to be the common parent, whether or not the group still exists. Temp. Treas. Reg. § 1.1502-77T(a).

Pursuant to I.R.C. § 1504(b)(3), a foreign corporation, such as ██████, is excepted from the definition of "includible corporation." In addition, since each of ██████'s former subsidiaries were separately owned by ██████ after ██████'s dissolution, Treas. Reg. § 1.1502-75(d)(2)(ii) is inapplicable in the instant case and, therefore, Treas. Reg. 1.1502-77T(a)(4)(iv) does not apply.

Designation Language

Included as page 1 of Exhibit B affixed hereto is a copy of the statement proposed for ██████'s designation of ██████ as the new agent pursuant to Treas. Reg. § 1.1502-77(d), marked with

² There is an issue concerning who the "remaining members" are. The Service generally takes the position that the "remaining members" are the corporations that were members of the group during the taxable years at issue, less any members that have subsequently gone out of existence.

modifications which we recommend be made. Below is a summary of the reasons for the recommended modifications.

We understand that you requested the designation statement be addressed to Director of Field Operations Joseph Brimacombe (Mr. Brimacombe), whose office address is P.O. Box 30227, Laguna Niguel, CA 92607-0227. However, since you would like Ethelyn McDaniel, the Exam Team Leader, to personally receive the statement from the taxpayer, you have had the taxpayer include the address for her post of duty at the Long Beach Federal Building. To ensure that the mailroom at the Long Beach Federal Building forwards the designation statement to Ethelyn McDaniel, please have the taxpayer address the designation statement "c/o" or "care of" Ethelyn McDaniel.

As you know, Treas. Reg. § 1.1502-77(d) provides that the designation of a member of a consolidated group as agent is subject to approval by the District Director. We have contacted the National Office to inquire who is the new appropriate official to approve the designation of a member of a consolidated group as agent. We have been advised that an attorney is assigned to prepare a notice setting forth which officials are to handle matters previously handled by the District Directors, but that the list that attorney received from LMSB does not mention Treas. Reg. § 1.1502-77(d). Meanwhile, you may have the taxpayer address the designation statement to Mr. Brimacombe, while bearing in mind that he may not be the proper approving official.

The term "Designated Common Parent" used by the taxpayer in the reference section is a misnomer. [REDACTED] was designated to act as agent for each subsidiary in the former [REDACTED] consolidated group in place of [REDACTED].

We have modified the second sentence of the draft statement to clarify that [REDACTED] was the designated agent for the [REDACTED] consolidated return group, rather than for [REDACTED].

For those subsidiaries like [REDACTED] and [REDACTED] which have changed their names, it would be preferable if the designation statements indicate their former names as well as their current names.

Agreement by [REDACTED] to Act as Agent

On the copy of the proposed agreement, which is included as page 2 of Exhibit B hereto, we have recommended that essentially the same modifications be made to the proposed agreement as we recommend be made to the proposed designation statement.

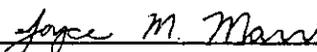
CONCLUSION AND RECOMMENDATIONS

Based on the factual information provided to us, we are of the opinion that the language proposed by the remaining members of the former [REDACTED] consolidated return group, with minor modifications which we have noted on copies of the proposed designation statement and agreement affixed hereto as Exhibit B, is acceptable.

We have been in contact with the National Office to attempt to ascertain who is now the appropriate Service official to approve the designation of a member of a consolidated group as agent, since the position of district director has been eliminated. To date, we do not have an answer to this question. As soon as we determine the proper approving official, we will notify you.

Please ensure that each and every remaining member of the consolidated group during any of the years under audit and/or any year for which you will be protecting the statute of limitations on assessment designates [REDACTED] as agent to act in [REDACTED]'s stead³ and that the designation is approved by the appropriate Service official. If these requirements are not met, the designations will not be valid.

This opinion is being forwarded to the Office of Chief Counsel for post-review; we will advise you as soon as possible if any changes to the advice are recommended. Please contact the undersigned at (949) 360-2688 if you have any questions.



JOYCE M. MARR
Attorney

Attachments

³ As discussed with Ms. Lozano, we do not opine as to whether the entities the taxpayer has listed as ones it will prepare designation statements for constitute all the remaining members of the [REDACTED] consolidated group. Please let us know if you decide you would like us to assist you in identifying the remaining subsidiaries on whose behalf designation statements should be executed.